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OFFICE OF PETITIONS

In re Application	:
Mozeleski, et al.	:
Application No. 09/750,567	: DECISION ON APPLICATION
Filed: December 26, 2000	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 99B065/2	:

This is a decision on the "PETITION UNDER 37 CFR § 1.181 FOR CORRECTION OF PATENT TERM EXTENSION," filed July 14, 2005, which is being treated as an application for patent term adjustment under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred six (106) days to six hundred sixty-seven (667) days.

For the reasons set forth below, a decision on the request for reconsideration of the patent term adjustment indicated on the patent is being **HELD IN ABEYANCE** until after the actual patent date.

Applicants are given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicants may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On May 13, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On February 3, 2005, applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA is eighty-six (86) days.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one hundred six (106) days based on an adjustment for PTO delay of one hundred eighty-two (182) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delays of five (5), one (1), and seventy (70) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). All periods of adjustment have been reviewed and found to be correct.

However, applicants assert additional PTO delay of six hundred sixty-seven (667) days for the failure on the part of the Office to issue the patent within three years of its filing. The Office will be able to assess whether or not any additional PTA is accorded once the issue date is established.²

Receipt of the \$400.00 submitted with the instant petition is acknowledged. However, an application for patent term adjustment under 37 CFR 1.705(b) only requires the fee set forth in 37 C.F.R. § 1.18(e) of \$200.00. Accordingly, the overpayment of \$200.00 has been refunded to Deposit Account No. 05-1712.

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

² Applicants should note that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period of pendency before the Office except for periods excluded under 35 U.S.C. (b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Karin Ferriter
for*

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